



4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 226

[BIA-2013-0003; 134/A0A511010/AAK1001000]

RIN 1076-AF17

Leasing of Osage Reservation Lands for Oil and Gas Mining

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is proposing to revise the regulations addressing oil and gas mining on reservation land of the Osage Nation. This rule updates the leasing procedures and rental, production, and royalties requirements for oil and gas on Osage Mineral lands and is the result of a negotiated rulemaking.

DATES: Comments on this proposed rule must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. *Comments on the information collections contained in this proposed regulation are separate from those on the substance of the rule.* Comments on the information collection burden should be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to ensure consideration, but must be received no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- Federal rulemaking portal: The rule is listed under the agency name “Bureau of Indian Affairs” and has been assigned Docket ID “BIA-2013-0003” at <http://www.regulations.gov>.

-E-mail: osageregneg@bia.gov. Include the number 1076-AF17 in the subject line of the message.

- Mail or hand-delivery: Mr. Eddie Streater, Designated Federal Officer, Bureau of Indian Affairs, P.O. Box 8002, Muskogee, OK 74402. Include the number 1076-AF17 on the outer envelope.

We cannot ensure that comments received after the close of the comment period (see DATES) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

Comments on the information collections contained in this proposed regulation are separate from those on the substance of the rule. Send comments on the information collection burden to OMB by facsimile to (202) 395-5806 or e-mail to the OMB Desk Officer for the Department of the Interior at OIRA_submission@omb.eop.gov. Please send a copy of your comments to the person listed in the FOR FURTHER INFORMATION CONTACT section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Eddie Streater, Designated Federal Officer, Bureau of Indian Affairs, P.O. Box 8002, Muskogee, OK 74402; telephone (918) 781-4608; fax (918) 718-4604; or email osageregneg@bia.gov. Additional information on the negotiated rulemaking can be found at: <http://www.bia.gov/osageregneg>.

SUPPLEMENTARY INFORMATION:

I. Executive Summary of Rule

This rule updates the oil and gas regulations governing Osage County. It is intended to strengthen the management and administration of the Osage mineral estate for the benefit of the Osage. These provisions provide updated reporting and inspection requirements, further specify

lessee obligations with respect to operations, revise royalty rate calculations and update the amounts for bonds, fines and penalties.

II. Background

On October 14, 2011, the United States and the Osage Nation (formerly known as the Osage Tribe) signed a Settlement Agreement to resolve litigation regarding alleged mismanagement of the Osage Nation's oil and gas mineral estate, among other claims. In the Settlement Agreement, the parties agreed that it would be mutually beneficial "to address means of improving the trust management of the Osage Mineral Estate, the Osage Tribal Trust Account, and Other Osage Accounts." The parties agreed that a review and revision of the existing regulations is warranted to better assist the Bureau of Indian Affairs (BIA) in managing the Osage Mineral Estate. The parties agreed to engage in a negotiated rulemaking for this purpose. For additional information on the negotiated rulemaking, please visit <http://www.bia.gov/osageregneg/>. The Committee submitted its report to BIA on April 25, 2013. BIA has based this proposed rule on the report.

III. Detailed Explanation of Revisions

This rule revises 25 CFR part 226 by changing all references to the "Osage Tribal Council" to the "Osage Minerals Council" because the Osage Tribal Council no longer exists and the Osage Minerals Council has the authority to make decisions regarding the Osage minerals estate. To avoid confusion in terminology, this rule changes all references to "lease cancellation" to "lease termination," unless it is a voluntary lease cancellation by a lessee. In addition, this rule adds the term "other marketable product" to the regulations to ensure that the regulations do not leave a gap as to other minerals.

In § 226.1, this rule:

- Inserts definition of “lease” because the prior regulations did not include a definition;
- Changes references to a “contract” or “agreement” to “lease”;
- Adds the phrase “or an authorized representative” to all lessee definitions to clarify that an authorized representative of a lessee is bound by the regulations;
- Deletes the definition of “major purchaser” because it is no longer necessary due to changes in the provisions dealing with royalty payments;
- Combines the definitions for “casinghead gas” and “natural gas” for simplification to make one new definition of “raw natural gas” or “gas”;
- Adds new definitions for “avoidably lost,” “condensate,” “drainage,” “marketable condition,” “maximum ultimate economic recovery,” “natural gas liquids,” “notice to lessee,” “onshore oil and gas order,” “other marketable product,” “production in paying quantities,” and “waste of oil and gas or other marketable product” to define new terms being introduced in the proposed regulations.

This rule also adds new sections and redesignates other sections, as shown in the table below.

Current 25 CFR Section	Proposed Section	Proposed Change
N/A	226.2 (New)	Clarifies what requirements govern oil and gas activities in Osage County.
N/A	226.3 (New)	Clarifies the types of notices and orders BIA can issue.
N/A	226.4 (New)	More clearly delineates and specifies the responsibilities of the Superintendent with respect to management and administration of the Osage mineral estate.
226.2	226.5	Breaks each current requirement into its own paragraph for readability and extends the time for a successful bidder to deposit his payment; requires that payment be made in a specified form other than cash; increases the filing fee for submitting a completed lease form; enumerates the circumstances in which a portion of the bonus bid will be forfeited; requires that the Superintendent post legal

		descriptions within 30 days of a lease sale; and allows the Osage Minerals Council to request comparables from the Superintendent for lease sales.
226.3	226.6	Increases the filing fee.
226.4	226.7	Amends the provision to allow the Superintendent to specify how and where payment is made.
226.5	226.8	(No substantive change.)
226.6	226.9	Amends the current provision to allow personal bonds as well as surety bonds and specifies the requirements for personal and surety bonds; the bonding amount was changed from a per lease area bond to requiring that a \$5,000 per well bond is required for up to 25 wells.
226.6(d)	226.10	Moves provision allowing the Superintendent to increase the amount of a required bond to its own section. Clarifies the conditions for increasing a bond.
N/A	226.11(New)	Specifies the circumstances in which the Superintendent must release a bond.
226.7	226.12	(No substantive change.)
226.8	226.13	(No substantive change.)
226.9	226.14	Increases rental rates; clarifies the lessee's responsibility for diligent development; adds new procedures for determining diligent development of a lease; and adds in new procedures for automatic termination of a lease for failure to diligently develop.
N/A	226.15 (New)	Sets forth the lessee's obligation relating to drainage, which is not included in the current regulations.
N/A	226.16 (New)	Specifies the Superintendent's remedies when drainage has occurred.
226.10	226.17	(No substantive change.)
226.11	(See below)	Divides into several new sections for simplicity and readability, as shown below.
226.11(a)	226.18	Amends the royalty rate calculation for oil, subject to a price adjustment for gravity.
226.11(a)	226.19	Specifies how the gravity adjustment is calculated.
226.11(b)	226.20	Amends the royalty rate calculation for gas and specifies how gross proceeds are calculated.
N/A	226.21	Provides that royalty is due on all oil and gas avoidably lost and sets forth the procedure for such determination.
226.11(c)	226.22	Amends the date for payment of royalty and adds a new provision for adjusting minimum royalty.
N/A	226.23 (New)	Addresses minimum royalty for other marketable products.
226.12	226.24	Amends the references to royalty consistent with the new proposed changes.
226.13(a)	226.25	Describes how royalty payments are made, extends the deadline for reporting, and adds a provision allowing the Superintendent to set an alternative rate for late charges after

		consultation with the Osage Minerals Council.
226.13(b)	226.26	Describes what reports are required to be submitted to the Superintendent and adds new provisions further specifying the format of reports and information required to be submitted and includes a new provision requiring that the Osage Minerals Council receive copies of reports.
226.14	226.27	Extends the due date in paragraph (b) for a purchaser to submit reporting statement for oil and gas sold.
226.15	(See below)	Divides in to several new sections for simplicity and readability, as shown below.
226.15(a)	226.28	(No substantive change.)
226.15(b)	226.29	(No substantive change.)
226.15(c)	226.30	(No substantive change.)
226.15(d)	226.31	(No substantive change.)
226.15(e)	226.32	(No substantive change.)
N/A	226.33 (New)	More clearly specifies the general requirements governing leasing operations.
226.16	226.34	(No substantive change.)
226.17	226.35	(No substantive change.)
226.18	226.36	Reformats for readability; adds new requirements for notice to surface owners before conducting certain activities; deletes the requirements for notice depending on surface owner residence; and applies new uniform standards regardless of residence within or outside Osage County.
226.19(a)	226.37	(No substantive change.)
226.19(b), (c)	226.38	(No substantive change.)
226.19(d)	226.39	Increases tank siting fees and area of occupancy.
226.20	226.40	(No substantive change.)
226.21	226.41	(No substantive change.)
N/A	226.42 (New)	Further specifies the lessee's obligation for production.
N/A	226.43 (New)	Requires documentation for transportation of oil, gas or other marketable product to enable the Superintendent to inspect and confirm proper transportation.
226.22	226.44	(No substantive change.)
N/A	226.45 (New)	Further clarifies and specifies the lessee's environmental responsibilities and obligations while conducting operations.
N/A	226.46 (New)	Requires certain safety standards for lessee operations and equipment.
226.23	226.47	(No substantive change.)
226.24	226.48	(No substantive change.)
226.25	226.49	Deletes the requirements that wells be plugged if no apportionment agreement is accepted, making the Superintendent's decision on apportionment final.
226.26	226.50	(No substantive change.)

226.27	226.51	Adds a general provision to require that gas used by the tribe must be odorized and treated to ensure human and public safety.
226.28	226.52	(No substantive change.)
226.29	226.53	Deletes the fee for submitting an application to plug a well; requires no fee.
226.30	226.54	Divides paragraph (b) into two provisions, thereby adding a paragraph (c). Adds a new paragraph (d) requiring that lessee maintain records for a period of 6 years, unless notified to maintain certain records for a longer period.
226.31	226.55	(No substantive change.)
226.32	226.56	Reformats for readability.
226.33	226.57	(No substantive change.)
226.34	226.58	Adds a requirement that wells and tank batteries also be marked with lessee's name.
226.35	226.59	(No substantive change.)
226.36	226.60	Adds new paragraphs (b)-(f) to require safety precautions for drilling wells generally, drilling vertical wells, maintaining and controlling high pressure or loss of circulation in wells, protecting fresh water and other minerals and ensuring safety and protection when hydrogen sulfide gas is present at certain levels.
226.37	226.61	(No substantive change.)
226.38	226.62	Adds new paragraphs (b)-(d) specifying requirements for measuring, calibrating and adjusting meters, including notice to and follow-up by the Superintendent; adds new provisions that require notification to the Superintendent when an oil tank is ready for removal or for witnessing gaugings, and adds that repeated failures to comply with the new provisions subject the lessee to lease termination after consultation with the Osage Minerals Council.
226.39	226.63	Adds new paragraphs requiring measurement of gas to be done in accordance with BLM Onshore Oil and Gas Order 5, and specifying lessee's obligations for calibrating, inspecting and adjusting meters, including notification and inspection by the Superintendent. Also, adds a provision that repeated failures to comply will subject the lease to termination after consultation with the Osage Minerals Council.
226.40	226.64	(No substantive change.)
N/A	226.65 (New)	Specifies safety and other requirements to ensure proper site security.
226.41	226.66	Adds requirements to ensure that all reporting of incidents is done in a timely manner.
226.42	226.67	Increases the fine from \$500 to \$1000 and adds provisions allowing for fine adjustments and termination of a lease for failure to comply with the regulations after consultation with

		the Osage Minerals Council.
226.43	226.68	Increases fines that are currently \$50 to \$150; fines that are \$100 to \$250; fines that are \$200 to \$400; and fines that are \$500 to \$1000. Adds a new fine of \$500 per day for failure to maintain adequate bonding and a new fine of up to \$1000 per day (not to exceed 20 days) for failure of a transporter to carry proper documentation.
226.43(j)	226.69	More clearly sets forth the criminal procedures for providing false, misleading, or inaccurate information.
N/A	226.70 (New)	Explains how fees and penalties are scaled, including specifying the interest rate for late fees.
226.44	226.71	(No substantive change.)
226.45	226.72	(No substantive change.)
226.46	226.73	(No substantive change.)

The BIA invites comments on all of the proposed changes, but would also like comments specifically addressing the following:

- Whether the impact of changes in the regulations on existing leases as set forth in proposed section 226.8 (changes in regulations) needs to be clarified;
- Whether there should be a specific reference to nationwide bonding in proposed section 226.9 (bonding) and/or comments on the current proposed bonding amount;
- Whether proposed section 226.18 (royalty) should include a deduction for transportation costs;
- Whether to extend the time period for automatic termination of a lease that does not produce in paying quantities from 90 consecutive days to 180 consecutive days (or some other time period) in proposed section 226.14 (e)(1) (requirements for rental, drilling and production).

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations and provide greater notice and clarity to the public.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The rule's requirements will not result in a major increase in costs or prices for consumers,

individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises because the rule is limited to management and administration of the Osage mineral estate.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable “taking.” A takings implication assessment is therefore not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets. This rule was developed by negotiated rulemaking with representatives of the affected tribe.

I. Paperwork Reduction Act

This rule includes information collections requiring approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq. These information collections have not been approved previously because the last update to 25 CFR part 226 was prior to amendments to the PRA subjecting these information collection requirements to OMB approval.

OMB Control Number: 1076-NEW.

Title: Leasing of Osage Reservation Lands for Oil and Gas Mining.

Brief Description of Collection: This part contains leasing procedures and requirements and rental, production, and royalty requirements for leasing the reservation lands of the Osage Nation for oil and gas mining. The Secretary must perform the information collection requests in this part to obtain the information necessary to complete leasing transactions and monitor leased property. Responses to these information collection requests are required to obtain a benefit (e.g., commercial transactions).

Type of Review: New information collection.

Respondents: Indians, businesses, and tribal authorities.

Number of Respondents: 965.

Frequency of Collection: On occasion.

Estimated Hours per Response: Ranges from 15 minutes to 8 hours (see table below).

Estimated Total Annual Responses: 14,414.

Estimated Total Annual Burden Hours: 21,932.

Non-Hour Cost Burden: \$496

The table showing the burden of the information collection is included below for your information.

Section	Information collection	Respondents	Annual Responses	Hourly burden per response	Total Annual Hourly Burden
226.5	Lessee must submit completed lease form	160	160	0.5	80
226.9	Lessee must submit bonds.	160	160	0.5	80
226.13	Corporate lessees must submit evidence of its officers' authority to execute papers and a copy of its Articles of Incorporation	150	150	0.25	38*
226.26 226.27(a)	Lessee must provide certified monthly reports covering operations and on value of all oil/gas used off premises for development and operation.	700	8,400	0.5	4,200
226.27(b)	Purchaser of oil or gas to furnish statement of gross barrels of oil or gross Mcf of gas sold and sales price per barrel or gross McF during the preceding month.	45	540	0.5	270
226.28	Submit agreement to unitize or terminate unitization of oil or gas leases to Secretary	1	1	1	1
226.29	Submit assignment or transfer of lease to Secretary	500	500	0.5	250
226.34(b) 226.52	Lessee must submit applications on BIA forms for well drilling, treating, or workover operations, removing casing from well. Application to shut down or plug well, with justification.	600	600	8	4,800
226.36	Lessee must notify and request meeting with surface owners by certified mail, provide copy to Superintendent, and provide info at meeting	160	160	1	160

226.40 226.41	Any person claiming an interest in the leased tract or in damages must provide a statement showing the claimed interest	1	1	1	1
226.43	Drivers must carry documentation showing the amount, origin and intended first purchaser of the oil or gas or marketable product	60	60	0.5	30
226.45(d)	Lessee must submit a contingency plan, when required	160	160	5	800
226.54	Lessee must keep a full and correct account of all operations, receipts, and disbursements and make reports thereof, as required, make available for inspection, and maintain for 6 yrs	700	700	1	700
226.56	Lessee must keep records of drilling, redrilling, deepening, repairing, treating, plugging or abandonment of all wells and furnish reports as required in manner and method specified by Superintendent	700	700	1	700
226.56	Lessee must transmit to Superintendent applicable information of completion of operations on any well on BIA forms; a copy of electrical, mechanical or radioactive log, or other types of survey of well bore, and core analysis of well.	700	700	8	5,600
226.56	Upon request, Lessee must furnish plat of wells in manner, form, and method prescribed by Superintendent.	700	700	2	1,400
226.65	Lessee must maintain site security plan, including facility diagram	700	700	4	2,800
226.66	Lessee must report accidents, fires, vandalism including an estimate of the volume of oil involved.	22	22	1	22
		Total	14,414	--	21,932

BIA invites comments on the information collection requirements in the proposed regulation. You may submit comments to OMB by facsimile to (202) 395-5806 or you may send an e-mail to the attention of the OMB Desk Officer for the Department of the Interior: OIRA_submission@omb.eop.gov. Please send a copy of your comments to the person listed in the FOR FURTHER INFORMATION CONTACT section of this notice. *Note that the request for comments on the rule and the request for comments on the information collection are separate.*

To best ensure consideration of your comments on the information collection, we encourage you to submit them by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]; while OMB has 60 days from the date of publication to act on the information collection request, OMB may choose to act on or after 30 days. Comments on the information collection should address: (a) the necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology. Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. It is categorically excluded from further review under 43 CFR 46.210(i) because these are regulations “whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process either collectively or case by case.” No extraordinary circumstances exist that would require greater NEPA review.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of this Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "COMMENTS" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

M. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 226

Indians-lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian

Affairs, proposes to amend part 226 in Title 25 of the Code of Federal Regulations by revising part 226 to read as follows:

PART 226—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

Sec.

226.1 Definitions.

226.2 What requirements govern oil and gas activities?

Subpart A - Leasing Procedure

226.3 What orders and notices can BIA issue?

226.4 What responsibilities does the Superintendent have?

226.5 What are the requirements for lease sales and approvals?

226.6 How does a lessee surrender a lease?

226.7 What forms of payment are acceptable?

226.8 How do changes in the current regulations impact leases?

226.9 What are the bonding requirements for leases?

226.10 Can the Superintendent increase the amount of the bond required?

226.11 When can the Superintendent release a bond?

226.12 What forms are made a part of the regulations?

226.13 What information must a corporation submit?

Subpart B – Rental, Production and Royalty

RENTAL, DRILLING AND PRODUCTION OBLIGATIONS

226.14 What are the requirements for rental, drilling, and production?

226.15 What are the lessee's obligations regarding drainage?

226.16 What can the Superintendent do when drainage occurs?

LEASE TERM

226.17 What is the term of a lease?

ROYALTY PAYMENTS

226.18 What is the royalty rate for oil?

226.19 How is the gravity adjustment calculated?

226.20 How is the royalty on gas calculated?

226.21 Who determines royalty on lost or wasted minerals?

226.22 What is the minimum royalty payment for all leases?

226.23 What royalty is due on other marketable products?

226.24 What purchase options does the Federal Government have?

226.25 How are royalty payments made?

226.26 What reports are required to be provided?

226.27 Can a lessee enter into royalty payment contracts and division orders?

UNIT LEASES, ASSIGNMENTS AND RELATED INSTRUMENTS

226.28 When is unitization allowed?

226.29 How are leases assigned?

- 226.30 Are overriding royalty agreements allowed?
- 226.31 When are drilling contracts allowed?
- 226.32 When can an oil lease and a gas lease be combined?

Subpart C – Operations

- 226.33 What are the general requirements governing operations?
- 226.34 What requirements apply to commencement of operations on a lease?
- 226.35 How does a lessee acquire permission to begin operations on a restricted homestead allotment?
- 226.36 What kind of notice and information is required to be given surface owners prior to commencement of drilling operations?
- 226.37 How much of the surface may a lessee use?
- 226.38 What commencement money must the lessee pay to the surface owner?
- 226.39 What fees must lessee pay to a surface owner for tank siting?
- 226.40 What is a settlement of damages claimed?
- 226.41 What is the procedure for settlement of damages claimed?
- 226.42 What are a lessee's obligations for production?
- 226.43 What documentation is required for transportation of oil or gas or other marketable product?
- 226.44 What are a lessee's obligations for preventing pollution?
- 226.45 What are a lessee's other environmental responsibilities?
- 226.46 What safety precautions must a lessee take?
- 226.47 When can the Superintendent grant easements for wells off leased premises?
- 226.48 A lessee's use of water.
- 226.49 What are the responsibilities of an oil lessee when a gas well is drilled and vice versa?
- 226.50 How is the cost of drilling a well determined?
- 226.51 What are the requirements for using gas for operating purposes and tribal uses?

Subpart D – Cessation of Operations

- 226.52 When can a lessee shutdown, abandon, and plug a well?
- 226.53 When must a lessee dispose of casings and other improvements?

Subpart E – Requirements of Lessees

- 226.54 What general requirements apply to lessees?
- 226.55 When must a lessee designate process agents?
- 226.56 What are the lessee's record and reporting requirements for wells?
- 226.57 What line drilling limitations must a lessee comply with?
- 226.58 What are the requirements for marking wells and tank batteries?
- 226.59 What precautions must a lessee take to ensure natural formations are protected?
- 226.60 What are a lessee's obligations to maintain control of wells?
- 226.61 How does a lessee prevent waste of oil and gas and other marketable products?
- 226.62 How does a lessee measure and store oil?
- 226.63 How is gas measured?
- 226.64 When can a lessee use of gas for lifting oil?

226.65 What site security standards apply to oil and gas and other marketable product leases?

226.66 What are a lessee's reporting requirements for accidents, fires, theft, and vandalism?

Subpart F – Penalties

226.67 What are the penalties for violations of lease terms?

226.68 What are the penalties for violation of certain operating regulations?

226.69 What are the penalties for providing false, inaccurate, or misleading information; or engaging in unlawful acts?

226.70 How are fees and penalties scaled?

Subpart G – Appeals and Notices

226.71 Who can file an appeal?

226.72 Are the notices by the Superintendent binding?

226.73 Information collection.

AUTHORITY: Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 3, 52 Stat. 1034, 1035; sec. 2(a), 92 Stat. 1660.

§ 226.1 Definitions.

As used in this part, terms shall have the meanings set forth in this section.

Authorized representative of an oil lessee, gas lessee, or oil and gas lessee means any person, group, or groups of persons, partnership, association, company, corporation, organization or agent employed by or contracted with a lessee or any subcontractor to conduct oil and gas operations or provide facilities to market oil and gas.

Avoidably lost means the venting or flaring of produced gas or other marketable product without the prior authorization, approval, ratification, or acceptance of the Superintendent and the loss of produced oil or gas or other marketable product when the Superintendent determines that such loss occurred as a result of:

(1) Negligence on the part of the lessee; or

(2) The failure of the lessee to take all reasonable measures to prevent and/or control the loss; or

(3) The failure of the lessee to comply fully with the applicable lease terms and regulations, applicable orders and notices, or the written orders of the Superintendent; or

(4) Any combination of the foregoing.

Condensate means liquid hydro-carbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Drainage means the migration of hydrocarbons, inert gases, or associated resources caused by production from other wells.

Gas lessee means any person, firm, or corporation to whom a gas mining lease is made under the regulations in this part, or an authorized representative.

Gas well means any well that:

(1) Produces raw natural gas not associated with crude petroleum oil at the time of production; or

(2) Produces more than 15,000 standard cubic feet of raw natural gas to each barrel of crude petroleum oil from the same producing formation.

Lease means any contract approved by the United States under the Act of June 28, 1906 (34 Stat. 539), as amended, that authorizes exploration for, extraction of, or removal of oil or gas.

Marketable condition means a condition in which lease products are sufficiently free from impurities and otherwise so conditioned that a purchaser will accept them under a sales contract typical for the field or area.

Maximum ultimate economic recovery means the recovery of oil and gas and any other marketable product from leased lands that a prudent lessee could be expected to make from that

field or reservoir given existing knowledge of reservoir and other pertinent facts and using common industry practices for primary, secondary or tertiary recovery operations.

Natural gas liquids (NGLs) means those gas plant products consisting of ethane, propane, butane, or heavier liquid hydrocarbons.

Notice to lessees (NTLs) means a written notice issued or adopted by the Superintendent. NTLs implement the regulations in this part and operating orders, and serve as instructions on specific item(s) of importance.

Oil and gas lessee means any person, firm, or corporation to whom an oil and gas mining lease is made under the regulations in this part, or an authorized representative.

Oil lessee means any person, firm, or corporation to whom an oil mining lease is made under the regulations in this part, or an authorized representative.

Oil well means any well that produces one barrel or more of crude petroleum oil for each 15,000 standard cubic feet of raw natural gas.

Onshore oil and gas order means a formal order issued or adopted by the Director of the Bureau of Indian Affairs that implements and supplements the regulations in this part.

Osage Minerals Council means the duly elected governing body of the Osage Nation or Tribe of Indians of Oklahoma vested with authority to enter into leases or take other actions on oil and gas mining pertaining to the Osage Mineral Estate.

Other marketable product means a non-hydrocarbon product, including but not limited to helium, nitrogen, and carbon-dioxide, for which there is a market.

Primary term means the basic period of time for which a lease is issued during which the lease contract may be kept in force by payment of rentals.

Production in paying quantities means production from a lease of oil and/or gas of sufficient value to exceed direct operating costs and the cost of lease rentals or minimum royalties.

Raw natural gas or gas means gas produced from oil and gas wells, including all natural gas liquids before any treating or processing.

Secretary means the Secretary of the Interior or the Secretary's authorized representative acting under delegated authority.

Superintendent means the Superintendent of the Osage Agency, Pawhuska, Oklahoma, or the Superintendent's authorized representative acting under delegated authority, or such other person as the Secretary or Superintendent may delegate to fulfill the responsibilities and exercise the authorities under this part.

Waste of oil or gas or other marketable product means any act or failure to act by the lessee that is not sanctioned by the Superintendent as necessary for proper development and production and that results in:

- (1) A reduction in the quantity or quality of oil and gas or other marketable product ultimately producible from a reservoir under prudent and proper operations; or
- (2) Avoidable surface loss of oil or gas or other marketable product.

§ 226.2 What requirements govern oil and gas activities?

All oil and gas activities conducted in Osage County are subject to:

- (a) The regulations in this part;
- (b) Lease terms;
- (c) Orders of the Superintendent; and
- (d) All other applicable laws, regulations, and authorities.

Subpart A - Leasing Procedure

§ 226.3 What orders and notices can BIA issue?

(a) In accordance with the Administrative Procedure Act, the Bureau of Indian Affairs (BIA), after consultation with the Osage Minerals Council, is authorized to:

(1) Issue and make effective in Osage County oil and gas orders or notices to lessees (NTLs); or

(2) Adopt onshore oil and gas orders, NTLs, or related oil and gas regulations issued by the Bureau of Land Management.

(b) Adoptions by the Bureau of Indian Affairs shall remain in effect according to their terms and shall not be modified by any action of the Bureau of Land Management unless the Director issues further orders to that effect in accordance with the Administrative Procedure Act.

§ 226.4 What responsibilities does the Superintendent have?

(a) The Superintendent is authorized and directed to:

(1) Approve unitization, communitization, gas storage and other contractual agreements;

(2) Assess compensatory royalty;

(3) Approve suspensions of operations or production, or both;

(4) Approve and monitor other lessee proposals for drilling, development or production of oil and gas and any other marketable product;

(5) Perform administrative reviews;

- (6) Impose monetary assessments or penalties;
- (7) Provide technical information and advice relative to oil and gas and any other marketable product development and operations;
- (8) Approve, inspect, and regulate the operations that are subject to the regulations in this part;
- (9) Require compliance with lease terms, with the regulations in this title and all other applicable regulations and laws; and
- (10) Require that all operations be conducted in a manner which protects natural resources and environmental quality, protects life and property, and results in the maximum ultimate recovery of oil and gas and any other marketable product with minimum waste and with minimum adverse effect on the ultimate recovery of other mineral resources.

(b) The Superintendent may issue written or oral orders to govern specific lease operations. Any oral orders shall be confirmed in writing by the Superintendent within 10 working days from issuance thereof. Before approving operations on a leasehold, the Superintendent shall determine that the lease is in effect, that acceptable bond coverage has been provided, and that the proposed plan of operations is sound.

(c) The Superintendent shall establish procedures to ensure that each lease site which has a history of noncompliance with applicable provisions of law or regulations, lease terms, orders or directives shall be inspected at least once annually.

§ 226.5 What are the requirements for lease sales and approvals?

- (a) The steps in a lease sale are as follows:
 - (1) A written application, together with any nomination fee, for tracts to be offered for lease shall be filed with the Superintendent.

(2) The Superintendent, with the consent of the Osage Minerals Council, shall publish notices for the sale of oil leases, gas leases, and oil and gas leases to the highest responsible bidder on specific tracts of the unleased Osage Mineral Estate. The Superintendent may require any bidder to submit satisfactory evidence of his good faith and ability to comply with all provisions of the notice of sale.

(3) A successful bidder must deposit with the Superintendent within 5 days following the sale, a cashier's check, money order, or electronic funds transfer in an amount not less than 25 percent of the cash bonus offered as a guaranty of good faith. Any and all bids shall be subject to acceptance by the Osage Minerals Council and approval by the Superintendent.

(4) Within 20 days after being notified, the successful bidder must submit to the Superintendent the balance of the bonus, a \$75 filing fee, and a completed lease form.

(i) The Superintendent may extend the deadline for submitting the completed lease form, but no extension shall be granted for remitting the balance of moneys due.

(ii) Twenty-five percent of the bonus bid will be forfeited for the use and benefit of the Osage Mineral Estate if any of the following occur:

(A) The bidder fails to pay the full consideration by the required deadline; or

(B) The bidder fails to file the completed lease by the required deadline or extension thereof; or

(C) The lease is rejected through no fault of the Osage Minerals Council or the Superintendent.

(5) The Superintendent may reject a lease made on an accepted bid, upon satisfactory evidence of collusion, fraud, or other irregularity in connection with the notice of sale.

(b) The Superintendent may approve oil leases, gas leases, and oil and gas leases made by the Osage Minerals Council in conformity with the notice of sale, regulations in this part, bonds, and other instruments required.

(c) Within 30 days following approval of a lease, the Superintendent shall post at the Agency, a legal description of the Mineral Estate that was leased.

(d) Prior to approval by the Superintendent, each oil and/or gas lease and activities and installations associated therewith subject to these regulations shall be assessed and evaluated for its environmental impact.

(e) The lessee shall accept a lease with the understanding that a mineral not covered by the lease may be leased separately.

(f) No lease, assignment thereof, or interest therein will be approved to any employee or employees of the Government and no such employee shall be permitted to acquire any interest in leases covering the Osage Mineral Estate by ownership of stock in corporations having leases or in any other manner.

(g) The Osage Minerals Council may utilize the following procedures among others, in entering into a lease:

(1) A lease may be entered into through competitive bidding as outlined in § 226.5(a)(2), negotiation, or a combination of both;

(2) The Osage Minerals Council may request the Superintendent undertake the preparation, advertisement and negotiation of leases; and/or

(3) The Osage Minerals Council may request the Superintendent to provide information regarding the current estimated value of any or all or each of the leases to the Osage Minerals Council based on comparable sales of Federal, Indian, State, and private leases.

(h) The Superintendent may approve any lease made by the Osage Minerals Council.

§ 226.6 How does a lessee surrender a lease?

(a) The lessee may, with the approval of the Superintendent and payment of a \$75 filing fee, surrender all or any portion of any lease, have the lease cancelled as to the portion surrendered and be relieved from all subsequent obligations and liabilities.

(b) If the lease, or portion, being surrendered is owned in undivided interests by more than one party, then the following requirements apply:

(1) All parties shall join in the application for cancellation;

(2) If the lease has been recorded, then the lessee shall execute a release and record the same in the proper office;

(3) Surrender shall not entitle the lessee to a refund of the unused portion of rental paid in lieu of development, nor shall it relieve the lessee and his or her sureties of any obligation and liability incurred prior to the surrender;

(4) When there is a partial surrender of any lease and the acreage to be retained is less than 160 acres, or there is a surrender of a separate horizon, the surrender shall become effective only with consent of the Osage Minerals Council and approval of the Superintendent.

§ 226.7 What forms of payment are acceptable?

Sums due under a lease contract and/or the regulations in this part shall be paid in the manner and method specified by the Superintendent, unless otherwise specified in these regulations. Such sums shall be a prior lien on all equipment and unsold oil on the leased premises.

§ 226.8 How do changes in the current regulations impact leases?

Leases issued pursuant to this part shall be subject to the current regulations of the Secretary, all of which are made a part of such leases: Provided, that no amendment or change of such regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental, or acreage unless agreed to by both parties and approved by the Superintendent.

§ 226.9 What are the bonding requirements for leases?

Lessees shall furnish surety bonds or personal bonds acceptable to the Superintendent as follows:

(a) The per-well “Bonding Amount” shall be \$5,000.

(b) A surety bond or personal bond equal to the Bonding Amount shall be filed at the time an Application for Permit to Drill is approved and/or the lessee acquires liability for existing wells on a lease.

(c) A lessee shall at all times maintain on file with the Superintendent surety bonds and/or personal bonds in an amount equal to the Bonding Amount times the number of wells on the lessee’s leases, up to a maximum of 25 wells.

(d) To meet the requirements of this section, a surety bond must be issued by a qualified surety company approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(e) Personal bonds shall be accompanied by at least one of the following:

(1) A certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate

shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party.

(2) A cashier's check.

(3) A certified check.

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Superintendent of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease.

(5) An irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Superintendent as sole payee with full authority to demand immediate payment in the case of default in the performance of the terms and conditions of a lease. Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its term. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given shall be collected by the Superintendent if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Superintendent upon demand, in part or in full, upon receipt from the Superintendent of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions or failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the Superintendent at least 90 days prior to the originally stated or any extended expiration date.

§ 226.10 Can the Superintendent increase the amount of the bond required?

(a) The Superintendent may require an increase in the amount of any bond in appropriate circumstances, including, but not limited to, a history of previous violations, uncollected royalties due, or when the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the Superintendent.

(b) The increase in bond amount may be to any level specified by the Superintendent, but in no circumstances shall it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due, plus the amount of monies owed to the lessor due to previous violations remaining outstanding.

§ 226.11 When can the Superintendent release a bond?

Within 45 calendar days of receiving written notice from a lessee that a well has been plugged or a lease has expired, the Superintendent shall confirm that:

(a) The well has been properly plugged and the well site has been reclaimed, or the lease site has been reclaimed;

(b) All property has been removed (unless otherwise agreed to in writing by the surface owner); and

(c) All wells have been properly plugged, and then release the bond.

§ 226.12 What forms are made a part of the regulations?

Leases, assignments, and supporting instruments shall be in the form prescribed by the Secretary, and such forms are hereby made a part of the regulations.

§ 226.13 What information must a corporation submit?

(a) If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its Articles of Incorporation and, if foreign to the State of Oklahoma, evidence showing compliance with the corporation laws thereof.

(b) Whenever deemed advisable, the Superintendent may require a corporation to file any additional information necessary to carry out the purpose and intent of the regulations in this part, and such information shall be furnished within a reasonable time.

Subpart B – Rental, Production and Royalty

RENTAL, DRILLING AND PRODUCTION OBLIGATIONS

§ 226.14 What are the requirements for rental, drilling, and production?

(a) Oil leases, gas leases, and combination oil and gas leases. Unless the lessee shall complete and place in production a well producing and selling oil and/or gas in paying quantities on the land embraced within the lease within 12 months from the date of approval of the lease, or as otherwise provided in the lease terms, or 12 months from the date the Superintendent consents to drilling on any restricted homestead selection, the lease shall terminate unless rental at the rate of not less than \$3 per acre for an oil or gas lease, or not less than \$6 per acre for a combination oil and gas lease, is paid at the beginning of the first year of the lease. These dollar amounts shall be adjusted as specified in § 226.70.

(1) The lease may also be held for the remainder of its primary term without drilling upon payment of the specified rental annually in advance, commencing with the second lease year.

(2) The lease shall terminate as of the due date of the rental unless such rental shall be received by the Superintendent on or before said date.

(3) The completion of a well producing in paying quantities shall, for so long as such production continues, relieve the lessee from any further payment of rental, except that, should such production cease during the primary term the lease may be continued only during the remaining primary term of the lease by payment of advance rental which shall commence on the next anniversary date of the lease. Rental shall be paid on the basis of a full year and no refund will be made of advance rental paid in compliance with the regulations in this part.

(b) The Superintendent may, with the consent of and under terms approved by the Osage Minerals Council, grant an extension of the primary term of a lease on which actual drilling of a well shall have commenced within the term thereof, or for the purpose of enabling the lessee to obtain a market for his oil and/or gas production.

(c) Irrespective of whether the lessee has drilled or paid rental, the Superintendent in his discretion may order further development of any leased acreage or separate horizon in any lease term if, in his opinion, a prudent lessee would conduct further development. A prudent lessee will diligently develop the minerals underlying the leasehold. The Osage Minerals Council shall have the right to request a determination of whether there is diligent development by the Superintendent as to any lease and may submit any materials or analysis to support its request. Upon receipt of a request, the Superintendent shall issue such a determination within 90 days.

(d) If the lessee refuses to comply with an order by the Superintendent to diligently develop its leasehold as a result of a determination under paragraph (c) of this section, the refusal will be considered a violation of the lease terms and said lease shall be terminated as to the

acreage or horizon the further development of which was ordered, after any appeal of an order. The Superintendent shall promptly notify the lessee of such termination.

(e) Except for a lease during its primary term for which rental payment has been paid, a lease that does not produce in paying quantities for 90 consecutive days is thereby terminated, effective immediately. The Superintendent shall notify the lessee of such termination.

(1) The Superintendent shall have the authority before termination to approve in writing a temporary suspension of operations tolling the 90-day period for a specified number of days, due to force majeure, other hardship, or other extenuating circumstance.

(2) Any request for a temporary suspension of operations shall be made in writing to the Superintendent no later than the 45th day that the lease has not produced in paying quantities. The Superintendent may waive this requirement.

(3) The Superintendent in his discretion may extend in writing the time of any temporary suspension of operations.

(4) The Superintendent shall provide a copy of any decision under this paragraph (e) to the Osage Minerals Council at the same time it is delivered to the lessee.

(f) Whenever the Osage Minerals Council identifies any lease that has terminated or may be subject to termination for any reason, the Osage Minerals Council shall have the right to request in writing appropriate action by the Superintendent, including but not limited to the issuance of a notice of termination to the lessee, and may submit any materials or analysis in support of its request. Upon receipt of such a request, within 90 days the Superintendent shall either take the requested action or issue a written decision responsive to the request.

(g) The Superintendent may impose restrictions as to time of drilling and rate of production from any well or wells when the Superintendent judges these restrictions to be

necessary or proper for the protection of the natural resources of the leased land and the interests of the Osage Mineral Estate. The Superintendent may consider, among other things, Federal and Oklahoma laws regulating either drilling or production.

(h) If a lessee holds both an oil lease and a gas lease covering the same acreage, such lessee is subject to the provisions of this section as to both the oil lease and the gas lease.

§ 226.15 What are the lessee's obligations regarding drainage?

(a) Where lands in any leases are being drained of their oil or gas content by wells outside the lease, the lessee shall drill or modify and produce all wells necessary to protect the leased lands from drainage within a reasonable time after the earlier of when the lessee knew or should have known of the drainage. In lieu of drilling or modifying necessary wells, the lessee may, with the consent of the Superintendent, pay compensatory royalty for drainage that has occurred or is occurring.

(b) Actions under paragraph (a) of this section are not required if the lessee proves to the Superintendent that when it first knew or had constructive notice of drainage it could not produce a sufficient quantity of oil or gas from a protective well on the lease in paying quantities above the cost of drilling and completing the protective well.

(c) A lessee has constructive notice that drainage may be occurring when well completion or first production reports for the draining well are publicly available, or, if the lessee operates or owns any interest in the draining well or lease, upon completion of drill stem, production, pressure analysis, or flow tests of the draining well.

(d) If a lessee assigns its interest in a lease or transfers its operating rights, it is liable for drainage that occurs before the date the assignment or transfer is approved by the Superintendent. Any lessee who acquires an interest in a lease that is being drained is liable for

all drainage obligations accruing on and after the date the assignment or transfer is approved by the Superintendent.

§ 226.16 What can the Superintendent do when drainage occurs?

(a) The Superintendent may send a demand letter by certified mail, return receipt requested, or personally serve the lessee with notice, if the Superintendent believes that drainage is occurring. However, the lessee's responsibility to take protective action arises when it first knew or had constructive notice of the drainage, even when that date precedes the demand letter.

(b) Since the time required to drill and produce a protective well varies according to the location and conditions of the oil and gas reservoir, the Superintendent will determine this on a case-by-case basis. The Superintendent will consider several factors, including, but not limited to:

(1) The time required to evaluate the characteristics and performance of the draining well;

(2) Rig availability;

(3) Well depth;

(4) Required environmental analysis;

(5) Special lease stipulations that provide limited time frames in which to drill; and

(6) Weather conditions.

(c) If the Superintendent determines that a lessee did not take protective action in a timely manner, the lessee will owe compensatory royalty for the period of the delay.

(d) The Superintendent will assess compensatory royalty beginning on the first day of the month following the earliest reasonable time the lessee should have taken protective action and continuing until:

(1) The lessee drills sufficient economic protective wells and the wells remain in continuous production;

(2) The draining well stops producing; or

(3) The lessee relinquishes its interest in the lease.

LEASE TERM

§ 226.17 What is the term of a lease?

Leases issued under this part shall be for a primary term as established by the Osage Minerals Council, approved by the Superintendent, and so stated in the notice of sale of such leases and so long thereafter as the minerals specified are produced in paying quantities.

ROYALTY PAYMENTS

§ 226.18 What is the royalty rate for oil?

(a) The lessee shall pay or cause to be paid to the Superintendent, as royalty, the sum of not less than 20 percent of the value of the oil determined under paragraph (b) of this section.

(b) Unless the Osage Minerals Council, with approval of the Secretary, shall elect to take the royalty in kind, payment is owing at the time of sale or removal of the oil, except where payments are made on division orders, and settlement value per barrel shall be the greater of:

(1) The average NYMEX daily price of oil at Cushing, Oklahoma, for the month in which the produced oil was sold, adjusted for gravity using the scale applicable under § 226.19; or

(2) The actual selling price as adjusted for gravity. The applicable average NYMEX daily price of oil at Cushing, Oklahoma and gravity adjustment scale shall be available from the Superintendent upon request, on or before the fifth day of the month following production.

(c) Should the lessor, with approval of the Secretary, elect to take the royalty in kind, the

lessee shall furnish free storage for royalty oil for a period not to exceed 60 days from date of production after notice of such election.

§ 226.19 How is the gravity adjustment calculated?

(a) The gravity adjustment of Average Daily NYMEX Price of oil at Cushing, Oklahoma under § 226.18(b)(1) shall be a deduction from the price per barrel, as follows:

If the gravity of the oil is...	the rate is ...	for each...
(1) Between 40.0 and 44.9 degrees	zero	
(2) Between 35.0 and 39.9 degrees	\$ 0.02	degree or fraction thereof below 40.0
(3) Below 35.0 degrees	\$ 0.10 plus an additional \$ 0.015	one-tenth of one degree below 35.0
(4) Above 44.9 degrees	\$ 0.015	for each one-tenth of one degree above 44.9.

(b) The Superintendent may, on or before the fifth day of the month following production, publish a gravity adjustment scale for oil of gravity below 40.0 degrees or above 44.9 degrees that supersedes this paragraph, but only if the Superintendent determines, based on substantial evidence, that market conditions so warrant.

§ 226.20 How is the royalty on gas calculated?

(a) All gas removed from the lease from which it is produced shall be metered before removal unless otherwise approved by the Superintendent and be subject to a royalty of not less than 20 percent of the gross proceeds of the gas. Unless the Osage Minerals Council, with approval of the Secretary, shall elect to take the royalty in kind, gross proceeds shall be calculated under paragraph (b) of this section; except that the Superintendent may direct (and the Osage Minerals Council may request that the Superintendent direct) any lessee, upon no less

than 30 days notice, to calculate gross proceeds at the higher royalty value of paragraph (b) or paragraph (c) of this section.

(b) Under this paragraph, gross proceeds of the gas shall be determined by multiplying the entire volume of gas at the well times the heating value of the gas measured in MMBtu as determined by periodic gas analysis, times the Monthly Index Price in dollars per MMBtu for Oklahoma Zone 1 published by the Department of the Interior's Office of Natural Resources Revenue. If that Monthly Index Price ceases to be published and is not otherwise available, the price shall be calculated in a comparable manner to be determined by the Superintendent. If any lessee supplies gas produced from one lease for operation and/or development of any other lease, including another lease held by the same lessee, the royalty calculated under this section shall be paid on all gas so used.

(c) Under this paragraph, gross proceeds of the gas shall be 100 percent of the actual proceeds from sales of all residue gas produced from the lease and one hundred percent of the actual proceeds from sales of all natural gas liquids produced from the lease (including drip condensate) minus the actual, reasonable cost of processing not to exceed 50 percent of the actual sales value of the natural gas liquids (including drip condensate). If the actual reasonable cost of processing cannot be obtained, upon approval by the Superintendent, the lessee may determine such cost in accordance with the alternative methodology and procedures in 30 CFR 1206.173. There shall be no other deductions of any kind, whether monetary or volumetric or otherwise, for any purpose, including but not limited to compression, dehydration, gathering, treating, or transportation.

§ 226.21 Who determines royalty on lost or wasted minerals?

Royalty on minerals wasted or avoidably lost. Royalty shall be due on all oil and gas wasted or avoidably lost, the volume and quality of which shall be determined by the Superintendent after taking into consideration information provided by the lessee, but resolving all doubts about volume and quality in favor of the lessor.

§ 226.22 What is the minimum royalty payment for all leases?

Royalty paid from producing leases during any year shall not be less than an amount equal to the annual rental specified for the lease. Any underpayment of minimum royalty shall be due and payable at the end of the lease year.

(a) After the primary term, the lessee shall submit with his payment evidence that the lease is producing in paying quantities.

(b) The Superintendent is authorized to determine whether the lease is actually producing in paying quantities or has terminated for lack of such production.

(c) Payment for any underpayment not made within the time specified shall be subject to a late charge at the rate of not less than 1 ½ percent per month for each month or fraction thereof until paid, or such other rate as may be set by the Superintendent after consultation with the Osage Minerals Council.

(d) The minimum royalty shall be adjusted in the same manner as the annual rental, consistent with §§ 226.14(a) and 226.70.

§ 226.23 What royalty is due on other marketable products?

A royalty on other marketable products shall be paid at the rate of not less than 20 per cent of the actual sales value of the other marketable products sold, irrespective of any other royalty due on oil or gas.

§ 226.24 What purchase options does the Federal Government have?

Any of the executive departments of the U.S. Government shall have the option to purchase all or any part of the oil produced from any lease at not less than the price as defined in § 226.18.

§ 226.25 How are royalty payments made?

(a) Royalty payments due may be paid by either the purchaser or the lessee.

(b) Unless otherwise provided by the Osage Minerals Council and approved by the Superintendent, all payments shall be due by the end of the month following the month during which the oil and gas is produced and sold, except when the last day of the month falls on a weekend or holiday. In such cases, payments are due on the first business day of the succeeding month. All payments shall cover the sales of the preceding month.

(c) Failure to make such payments shall subject the lessee or purchaser, whoever is responsible for royalty payment, to a late charge at the rate of not less than 1 ½ percent for each month or fraction thereof until paid, or such other rate as may be set by the Superintendent after consultation with the Osage Minerals Council. The Osage Minerals Council, subject to the approval of the Superintendent, may waive the late charges.

§ 226.26 What reports are required to be provided?

The lessee shall furnish certified monthly reports covering all operations in a form specified by the Superintendent, whether there has been production or not, indicating therein the total amount of oil, raw natural gas, and other products subject to royalty payment, by the end of the month following the month during which the oil and gas is produced and sold, except when the last day of the month falls on a weekend or holiday. In such cases, reports are due on the first business day of the succeeding month.

(a) Reports covering oil production shall include the date of each sale of oil, well or lease identity, lessee, purchaser, volume of oil sold, gravity of oil sold, price paid per barrel for the sale, 40-degree price used for the sale, gravity adjustment scale used for the sale, and total amount paid for the sale.

(b) Reports covering gas production shall contain the total volume of raw natural gas measured at the well, the BTU value of raw natural gas produced at the well, the periodic gas analysis applicable to the sale, and the total value paid for the raw natural gas, residue gas, natural gas liquids, and condensate.

(c) Report forms shall be submitted in .csv (comma separated value) or ASCII format, or such other equivalent format specified by the Superintendent. The Superintendent shall specify the method of transmittal. The Superintendent may specify that lessees shall submit the reports and information required by this section directly to other federal agencies within the Department of the Interior, in lieu of the Superintendent.

(d) The Superintendent shall provide to the Osage Minerals Council copies of all reports under this section on at least a quarterly basis in the format originally received by the lessee. Upon written request by the Osage Minerals Council, the Superintendent shall require lessees to provide to the Osage Minerals Council copies of run tickets.

(e) Failure to remit reports shall subject the lessee to further penalties as provided in §§ 226.67 and 226.68 and shall subject any royalty payment contract or division order to termination.

§ 226.27 Can a lessee enter into royalty payment contracts and division orders?

(a) The lessee may enter into division orders or contracts with the purchasers of oil, gas, or derivatives therefrom that will provide for the purchaser to make payment of royalty in accordance with his lease. The following requirements apply in these cases:

(1) The division orders or contracts shall not relieve the lessee from responsibility for the payment of the royalty should the purchaser fail to pay.

(2) No production shall be removed from the leased premises until a division order and/or contract and its terms are approved by the Superintendent:

(3) The Superintendent may grant temporary permission to run oil or gas from a lease pending the approval of a division order or contract.

(4) The lessee shall file a certified monthly report and pay royalty on the value of all oil and gas used off the premises for development and operating purposes.

(5) The lessee shall be responsible for the correct measurement and reporting of all oil and/or gas taken from the leased premises.

(b) The lessee shall require the purchaser of oil and/or gas from its lease or leases to furnish the Superintendent, a statement reporting the gross barrels of oil and/or gross Mcf of gas sold and sales price per barrel and/or gross McF during the preceding month, by the end of the month following the month during which the oil and gas is produced and sold, except when the last day of the month falls on a weekend or holiday. In such cases, statements are due on the first business day of the succeeding month. The Superintendent may authorize an extension of time, not to exceed 10 days, for furnishing this statement.

UNIT LEASES, ASSIGNMENTS AND RELATED INSTRUMENTS

§ 226.28 When is unitization allowed?

The Osage Minerals Council and the lessee or lessees, may, with the approval of the Superintendent, unitize or merge, two or more oil or oil and gas leases into a unit or cooperative operating plan to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof embracing the lands covered by such lease or leases.

(a) The cooperative or unit agreement shall be subject to the regulations in this part and applicable laws governing the leasing of the Osage Mineral Estate.

(b) Any agreement between the parties in interest to terminate a unit or cooperative agreement as to all or any portion of the lands included shall be submitted to the Superintendent for his approval.

(c) Upon approval under paragraph (b) of this section, the leases included under the cooperative or unit agreement shall be restored to their original terms.

(d) For the purpose of preventing waste and to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof, all oil leases, oil and gas leases, and gas leases issued under this part shall be subject to any unit development plan affecting the leased lands that may be required by the Superintendent with the consent of the Osage Minerals Council. This plan shall adequately protect the rights of all parties in interest, including the Osage Mineral Estate.

§ 226.29 How are leases assigned?

Approved leases or any interest therein may be assigned or transferred only with the approval of the Superintendent. The assignee must be qualified to hold such lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions thereof.

(a) The lessee must assign either his entire interest in a lease or legal subdivision thereof, or an undivided interest in the whole lease: Provided, that when an assignment covers only a portion of a lease or covers interests in separate horizons, such assignment shall be subject to both the consent of the Osage Minerals Council and approval of the Superintendent.

(b) If a lease is divided by the assignment of an entire interest in any part, each part shall be considered a separate lease and the assignee shall be bound to comply with all the terms and conditions of the original lease.

(c) A fully executed copy of the assignment shall be filed with the Superintendent within 30 days after the date of execution by all parties. If requested within the 30-day period, the Superintendent may grant an extension of 15 days.

(d) A filing fee of \$75 shall accompany each assignment.

§ 226.30 Are overriding royalty agreements allowed?

Agreements creating overriding royalties or payments out of production shall not be considered as an interest in a lease as such term is used in § 226.29. Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in any such agreement shall be construed as modifying any of the obligations of the lessee under its lease and the regulations in this part. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments.

(a) The existence of agreements creating overriding royalties or payments out of production, whether or not actually paid, shall not be considered in justifying the shutdown or abandonment of any well.

(b) Agreements creating overriding royalties or payments out of production need not be filed with the Superintendent unless incorporated in assignments or instruments required to be filed pursuant to § 226.29.

§ 226.31 When are drilling contracts allowed?

The Superintendent is authorized to approve drilling contracts with a stipulation that such approval does not in any way bind the Department to approve subsequent assignments that may be provided for in said contracts. Approval merely authorizes entry on the lease for the purpose of development work.

§ 226.32 When can an oil lease and a gas lease be combined?

A lessee owning both an oil lease and gas lease covering the same acreage is authorized to convert such leases to a combination oil and gas lease.

Subpart C – Operations

§ 226.33 What are the general requirements governing operations?

(a) The lessee shall comply with applicable laws and regulations; with the lease terms; and with orders and instructions of the Superintendent. These include, but are not limited to, conducting all operations in a manner that:

- (1) Ensures the proper handling, measurement, disposition, and site security of leasehold production;
- (2) Protects other natural resources and environmental quality;
- (3) Protects life and property; and
- (4) Results in maximum ultimate economic recovery of oil and gas and other marketable products with minimum waste and with minimum adverse effect on ultimate recovery of other mineral resources.

(b) The lessee shall permit properly identified authorized representatives of the Superintendent to enter upon, travel across, and inspect lease sites and records normally kept on the lease pertinent thereto without advance notice. Inspections normally will be conducted during those hours when responsible persons are expected to be present at the operation being inspected. Such permission shall include access to secured facilities on such lease sites for the purpose of making any inspection or investigation for determining whether there is compliance with applicable law, the regulations in this part, and any applicable orders, notices or directives.

(c) For the purpose of making any inspection or investigation, the Superintendent shall have the same right to enter upon or travel across any lease site as the lessee.

§ 226.34 What requirements apply to commencement of operations on a lease?

(a) No operations shall be permitted upon any tract of land until a lease covering such tract shall have been approved by the Superintendent. The Superintendent may grant authority to any party under such lease, consistent with the regulations in this part that he or she deems proper, to conduct geophysical and geological exploration work.

(b) The lessee shall submit applications on forms to be furnished by the Superintendent and secure approval before:

(1) Well drilling, treating, or workover operations are started on the leased premises.

(2) Removing casing from any well.

(c) The lessee shall notify the Superintendent a reasonable time in advance of starting work, of intention to drill, redrill, deepen, plug, or abandon a well.

§ 226.35 How does a lessee acquire permission to begin operations on a restricted homestead allotment?

(a) The lessee may conduct operations within or upon a restricted homestead selection only with the written consent of the Superintendent.

(b) If the allottee is unwilling to permit operations on his homestead, the Superintendent will cause an examination of the premises to be made with the allottee and lessee or his representative. Upon finding that the interests of the Osage Mineral Estate require that the tract be developed, the Superintendent will endeavor to have the parties agree upon the terms under which operations on the homestead may be conducted.

(c) In the event the allottee and lessee cannot reach an agreement, the matter shall be presented by all parties before the Osage Minerals Council, and the Council shall make its recommendations. Such recommendations shall be considered as final and binding upon the allottee and lessee. A guardian may represent the allottee. Where no one is authorized or where no person is deemed by the Superintendent to be a proper party to speak for a person of unsound mind or feeble understanding, the Principal Chief of the Osage Tribe shall represent him.

(d) If the allottee or his representative does not appear before the Osage Minerals Council when notified by the Superintendent, or if the Council fails to act within 10 days after the matter is referred to it, the Superintendent may authorize the lessee to proceed with operations in conformity with the provisions of his lease and the regulations in this part.

§ 226.36 What kind of notice and information is required to be given surface owners prior to commencement of drilling operations?

(a) The lessee shall notify or attempt to notify the surface owner in one general written notification sent by certified mail with a copy to the Superintendent, that it plans to begin conducting the following activities over the term of its lease: archeological or biological surveys, or staking of wells.

(b) No operations of any kind shall commence until the lessee or its authorized representative shall meet with the surface owner or his/her representative. The lessee must request the meeting in writing by certified mail and provide a copy of the letter to the Superintendent. Unless waived by the Superintendent or otherwise agreed to between the lessee and surface owner, such meeting shall be held at least 10 calendar days prior to the commencement or any operations. At such meeting lessee or its authorized representative shall comply with the following requirements:

(1) Indicate the location of the well or wells to be drilled.

(2) Arrange for a route of ingress and egress. Upon failure to agree on a route of ingress and egress, said route shall be set by the Superintendent.

(3) Furnish to said surface owners the name and address of the party or representative upon whom the surface owner shall serve any claim for damages which he may sustain from mineral development or operations, and as to the procedure for settlement thereof as provided in § 226.41.

(4) Where the drilling is to be on restricted land, lessee or its authorized representative in the manner provided above shall meet with the Superintendent.

(5) When the surface owner or its representative cannot be contacted at the last known address or has not accepted a meeting request within 30 calendar days of receipt of the request, the Superintendent shall, in writing, authorize lessee to proceed with operations.

§ 226.37 How much of the surface may a lessee use?

The lessee or its authorized representative shall have the right to use so much of the surface of the land within the Osage Mineral Estate as may be reasonable for operations and marketing. This includes, but is not limited to the right to, lay and maintain pipelines, electric

lines, pull rods, other appliances necessary for operations and marketing, and the right-of-way for ingress and egress to any point of operations.

(a) If the lessee and surface owner are unable to agree as to the routing of pipelines, electric lines, etc., said routing shall be set by the Superintendent.

(b) The right to use water for lease operations is established by § 226.48.

(c) The lessee shall conduct its operations in a workmanlike manner, commit no waste and allow none to be committed upon the land, nor permit any avoidable nuisance to be maintained on the premises under its control.

§ 226.38 What commencement money must the lessee pay to the surface owner?

(a) Before commencing actual exploration and/or development, the lessee shall pay or tender to the surface owner commencement money in the amount of \$25 per shot hole for explosive source (for the acquisition of Single Fold (100 per cent Seismic)), or \$400 per linear mile for surface source data acquisition. For the purpose of conducting a 3D seismic survey, the lessee shall pay commencement money in the amount of \$10 per acre occupied during the time the survey is conducted. The lessee shall also pay commencement money in the amount of \$2500 for each well.

(1) After payment of commencement money the lessee shall be entitled to immediate possession of the drilling site.

(2) Commencement money will not be required for the redrilling of a well which was originally drilled under the current lease.

(3) A drilling site shall be held to the minimum area essential for operations and shall not exceed one and one-half acres in area unless authorized by the Superintendent.

(4) Commencement money shall be a credit toward the settlement of the total damages.

(5) Acceptance of commencement money by the surface owner does not affect its right to compensation for damages as described in § 226.40, occasioned by the drilling and completion of the well for which it was paid.

(6) Since actual damage to the surface from operations cannot necessarily be ascertained prior to the completion of a well as a serviceable well or dry hole, a damage settlement covering the drilling operation need not be made until after completion of drilling operations.

(b) Where the surface is restricted land, commencement money shall be paid to the Superintendent for the landowner. All other surface owners shall be paid or tendered such commencement money direct.

(1) Where such surface owners are neither residents of Osage County, nor have a representative located therein, such payment shall be made or tendered to the last known address of the surface owner at least 5 days before commencing drilling operation on any well.

(2) If the lessee is unable to reach the owner of the surface of the land for the purpose of tendering the commencement money or if the owner of the surface of the land refuses to accept the same, the lessee shall deposit such amount with the Superintendent by check payable to the Bureau of Indian Affairs. The superintendent shall thereupon advise the owner of the surface of the land by mail at his last known address that the commencement money is being held for payment to him upon his written request.

§ 226.39 What fees must lessee pay to a surface owner for tank siting?

The lessee shall pay fees for each tank sited at the rate of \$500 per tank, except that:

(a) No payment shall be due for a tank temporarily set on a well location site for drilling, completing, or testing; and

(b) The sum to be paid for a tank occupying an area more than 2500 square feet shall be agreed upon between the surface owner and lessee or, on failure to agree, the same shall be determined by arbitration as provided by § 226.41.

§ 226.40 What is a settlement of damages claimed?

(a) The lessee or its authorized representative or geophysical permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages as may be occasioned by operations. Commencement money shall be a credit toward the settlement of the total damages occasioned by the drilling and completion of the well for which it was paid. Such damages shall be paid to the owner of the surface and by him apportioned among the parties interested in the surface, whether as owner, surface lessee, or otherwise, as the parties may mutually agree or as their interests may appear. If the lessee or its authorized representative and surface owner are unable to agree concerning damages, the same shall be determined by arbitration. Nothing herein contained shall be construed to deny any party the right to file an action in a court of competent jurisdiction if he is dissatisfied with the amount of the award.

(b) Surface owners shall notify their lessees or tenants of the regulations in this part and of the necessary procedure to follow in all cases of alleged damages. If so authorized in writing, surface lessees or tenants may represent the surface owners.

(c) In settlement of damages on restricted land, all sums due and payable shall be paid to the Superintendent for credit to the account of the Indian entitled thereto. The Superintendent will make the apportionment between the Indian landowner or owners and surface lessee of record.

(d) Any person claiming an interest in any leased tract or in damages thereto, must furnish to the Superintendent a statement in writing showing said claimed interest. Failure to

furnish such statement shall constitute a waiver of notice and estop said person from claiming any part of such damages after the same shall have been disbursed.

§ 226.41 What is the procedure for settlement of damages claimed?

Where the surface owner or his lessee suffers damage due to the oil and gas operations and/or marketing of oil or gas by lessee or its authorized representative, the procedure for recovery shall be as follows:

(a) The party or parties aggrieved shall, as soon as possible after the discovery of any damages, serve written notice to lessee or its authorized representative as provided by § 226.36. Written notice shall contain the nature and location of the alleged damages, the date of occurrence, the names of the party or parties causing said damages, and the amount of damages. It is not intended by this requirement to limit the time within which action may be brought in the courts to less than the 90-day period allowed by section 2 of the Act of March 2, 1929 (45 Stat. 1478, 1479).

(b) If the alleged damages are not adjusted at the time of such notice, the lessee or its authorized representative shall try to adjust the claim with the party or parties aggrieved within 20 days from receipt of the notice. If the claimant is the owner of restricted property and a settlement results, a copy of the settlement agreement shall be submitted to the Superintendent for approval. If the settlement agreement concerning the restricted property is approved by the Superintendent, payment shall be made to the Superintendent for the benefit of said claimant.

(c) If the parties fail to adjust the claim within the 20 days specified, then within 10 days thereafter each of the interested parties shall appoint an arbitrator who immediately upon their appointment shall agree upon a third arbitrator. If the two arbitrators shall fail to agree upon a third arbitrator within 10 days, they shall immediately notify the parties in interest. If said

parties cannot agree upon a third arbitrator within 5 days after receipt of such notice, the Superintendent shall appoint the third arbitrator.

(d) As soon as the third arbitrator is appointed, the arbitrators shall meet; hear the evidence and arguments of the parties; and examine the lands, crops, improvements, or other property alleged to have been injured. Within 10 days they shall render their decision as to the amount of the damage due. The arbitrators shall be disinterested persons. The fees and expenses of the third arbitrator shall be borne equally by the claimant and the lessee or its authorized representative. Each lessee or its authorized representative and claimant shall pay the fee and expenses for the arbitrator appointed by him.

(e) When an act of an oil or gas lessee or its authorized representative results in injury to both the surface owner and his lessee, the parties aggrieved shall join in the appointment of an arbitrator. Where the injury complained of is chargeable to more than one oil or gas lessee, or its authorized representative, all such chargeable lessees or representatives shall join in the appointment of an arbitrator.

(f) Any two of the arbitrators may make a decision as to the amount of damage due. The decision shall be in writing and shall be served forthwith upon the parties in interest. Each party shall have 90 days from the date the decision is served in which to file an action in a court of competent jurisdiction. If no such action is filed within said time and the award is against the lessee or its authorized representative, he/she shall pay the same, together with interest at an annual rate established for the Internal Revenue Service from date of award, within 10 days after the expiration of said period for filing an action.

(g) The lessee or its authorized representative shall file with the Superintendent a report on each settlement agreement, setting out the nature and location of the damage, date, and amount of the settlement, and any other pertinent information.

§ 226.42 What are a lessee's obligations for production?

(a) The lessee shall put into marketable condition at no cost to the lessor, all oil, gas, and other marketable products produced from the leased land.

(b) Where oil accumulates in a pit, such oil must either be:

(1) Recirculated through the regular treating system and returned to the stock tanks for sale;

or

(2) Pumped into a stock tank without treatment and measured for sale in the same manner as from any sales tank in accordance with applicable orders and notices.

(c) In the absence of prior approval from the Superintendent, no oil should be pumped into a pit except in an emergency. Each such occurrence must be reported to the Superintendent and the oil promptly recovered in accordance with applicable orders and notices.

§ 226.43 What documentation is required for transportation of oil or gas or other marketable product?

(a) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry on his/her person, in his/her vehicle, or in his/her immediate control, documentation showing at a minimum; the amount, origin, and intended first purchaser of the oil.

(b) Any person engaged in transporting any oil or gas or other marketable product by pipeline from any lease site, or allocated to any lease site, shall maintain documentation

showing, at a minimum, the amount, origin, and intended first purchaser of such oil or gas or other marketable product.

(c) On any lease site, any authorized representative of the Superintendent who is properly identified may stop and inspect any motor vehicle that he/she has probable cause to believe is carrying oil from any such lease site, or allocated to such lease site, to determine whether the driver possesses proper documentation for the load of oil.

(d) Any authorized representative of the Superintendent who is properly identified and who is accompanied by an appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he/she has probable cause to believe the vehicle is carrying oil from a lease site, or allocated to a lease site, to determine whether the driver possesses proper documentation for the load of oil.

§ 226.44 What are a lessee's obligations for preventing pollution?

(a) All lessees, contractors, drillers, service companies, pipe pulling and salvaging contractors, or other persons, shall at all times conduct their operations and drill, equip, operate, produce, plug, and abandon all wells drilled for oil or gas, service wells or exploratory wells (including seismic, core, and stratigraphic holes) in a manner that will prevent pollution and the migration of oil, gas, salt water, or other substance from one stratum into another, including any fresh water bearing formation.

(b) Pits for drilling mud or deleterious substances used in the drilling, completion, recompletion, or workover of any well shall be constructed and maintained to prevent pollution of surface and subsurface fresh water. These pits shall be enclosed with a fence of at least four strands of barbed wire, or an approved substitute, stretched taut to adequately braced corner posts, unless the surface owner, user, or the Superintendent gives consent to the contrary.

Immediately after completion of operations, pits shall be emptied, reclaimed, and leveled unless otherwise requested by surface owner or user.

(c) Drilling pits shall be adequate to contain mud and other material extracted from wells and shall have adequate storage to maintain a supply of mud for use in emergencies.

(d) No earthen pit, except those used in the drilling, completion, recompletion or workover of a well, shall be constructed, enlarged, reconstructed or used without approval of the Superintendent. Unlined earthen pits shall not be used for the storage of salt water or other deleterious substances.

(e) Deleterious fluids other than fresh water drilling fluids used in drilling or workover operations, which are displaced or produced in well completion or stimulation procedures, including, but not limited to, fracturing, acidizing, swabbing, and drill stem tests, shall be collected into a pit lined with plastic of at least 30 mil or a metal tank and maintained separately from above-mentioned drilling fluids to allow for separate disposal.

§ 226.45 What are a lessee's other environmental responsibilities?

(a) The lessee shall conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality. The lessee shall comply with the pertinent orders of the Superintendent and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan or subsequent operations plan.

(b) The lessee shall exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources or surface improvements.

(1) All produced water must be disposed of by injection into the subsurface, in approved pits, or by other methods which have been approved by the Superintendent.

(2) Upon the conclusion of operations, the lessee shall reclaim the disturbed surface in a manner approved or prescribed by the Superintendent.

(c) All spills or leakages of oil, gas, other marketable products, produced water, toxic liquids, or waste materials, blowouts, fires, personal injuries, and fatalities shall be reported by the lessee to the Superintendent as soon as discovered, but not later than the next business day.

(1) The lessee shall exercise due diligence in taking necessary measures, subject to approval by the Superintendent, to control and remove pollutants and to extinguish fires.

(2) A lessee's compliance with the requirements of the regulations in this part shall not relieve the lessee of the obligation to comply with other applicable laws and regulations.

(d) When required by the Superintendent, a contingency plan shall be submitted describing procedures to be implemented to protect life, property, and the environment.

(e) The lessee's liability for damages to third parties shall be governed by applicable law.

§ 226.46 What safety precautions must a lessee take?

The lessee shall perform operations and maintain equipment in a safe and workmanlike manner. The lessee shall take all precautions necessary to provide adequate protection for the health and safety of life and the protection of property. Such precautions shall not relieve the lessee of the responsibility for compliance with other pertinent health and safety requirements under applicable laws or regulations.

§ 226.47 When can the Superintendent grant easements for wells off leased premises?

The Superintendent, with the consent of the Osage Minerals Council, may grant commercial and noncommercial easements for wells off the leased premises to be used for purposes associated with oil and gas production. Rents payable to the Osage Mineral Estate for such easements shall be in an amount agreed to by Grantee and the Osage Minerals Council,

subject to the approval of the Superintendent. Grantee shall be responsible for all damages resulting from the use of such wells and settlement for any damages shall be made as provided in § 226.41.

§ 226.48 A lessee's use of water.

The lessee or his contractor may, with the approval of the Superintendent, use water from streams and natural water courses to the extent that such use does not diminish the supply below the requirements of the surface owner from whose land the water is taken. Similarly, the lessee or his contractor may use water from reservoirs formed by the impoundment of water from such streams and natural water courses, if such use does not exceed the quantity to which they originally would have been entitled had the reservoirs not been constructed. The lessee or his/her contractor may install necessary lines and other equipment within the Osage Mineral Estate to obtain such water. Any damage resulting from such installation shall be settled as provided in § 226.41.

§ 226.49 What are the responsibilities of an oil lessee when a gas well is drilled and vice versa?

Prior to drilling, an oil or gas lessee shall notify the other lessees of its intent to drill. When an oil lessee in drilling a well encounters a formation or zone having indications of possible gas production, or the gas lessee in drilling a well encounters a formation or zone having indication of possible oil production, the lessee shall immediately notify the other lessee and the Superintendent. The lessee drilling the well shall obtain all information that a prudent lessee would utilize to evaluate the productive capability of such formation or zone.

(a) Gas well to be turned over to gas lessee. If an oil lessee drills a gas well, it shall, without removing from the well any of the casing or other equipment, immediately shut the well in and notify the gas lessee and the Superintendent.

(1) If the gas lessee does not, within 45 days after receiving notice and determining the cost of drilling, elect to take over such well and reimburse the oil lessee the cost of drilling, including all damages paid and the cost in-place of casing, tubing, and other equipment, the oil lessee shall immediately confine the gas to the original stratum. The disposition of such well and the production therefrom shall then be subject to the approval of the Superintendent.

(2) If the oil lessee and gas lessee cannot agree on the cost of the well, the Superintendent will apportion the cost between the oil and gas lessees.

(b) Oil well to be turned over to oil lessee. If a gas lessee drills an oil well, then it must immediately, without removing from the well any of the casing or other equipment, notify the oil lessee and the Superintendent.

(1) If the oil lessee does not, within 45 days after receipt of notice and cost of drilling, elect to take over the well, it must immediately notify the gas lessee. From that point, the Superintendent must approve the disposition of the well, and any gas produced from it.

(2) If the oil lessee chooses to take over the well, it must pay to the gas lessee:

- (i) The cost of drilling the well, including all damages paid; and
- (ii) The cost in place of casing and other equipment.

(3) If the oil lessee and the gas lessee cannot agree on the cost of the well, the Superintendent will apportion the cost between the oil and gas lessees.

(c) Lands not leased. If a gas lessee drills an oil well upon lands not leased for oil purposes or vice versa, the Superintendent may, until such time as said lands are leased, permit

the lessee who drilled the well to operate and market the production therefrom. When said lands are leased, the lessee who drilled and completed the well shall be reimbursed by the oil or gas lessee for the cost of drilling said well, including all damages paid and the cost of in-place casing, tubing, and other equipment. If the lessee does not elect to take over said well as provided above, the disposition of such well and the production therefrom shall be determined by the Superintendent. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost shall be apportioned between the oil and gas lessee by the Superintendent.

§ 226.50 How is the cost of drilling a well determined?

The term “cost of drilling” as applied where one lessee takes over a well drilled by another, shall include all reasonable, usual, necessary, and proper expenditures. A list of expenses mentioned in this section shall be presented to proposed purchasing lessee within 10 days after the completion of the well. In the event of a disagreement between the parties as to the charges assessed against the well that is to be taken over, such charges shall be determined by the Superintendent.

§ 226.51 What are the requirements for using gas for operating purposes and tribal uses?

All gas used in accordance with this section must first be odorized and treated in accordance with industry standards for safe use.

(a) Gas to be furnished oil lessee. The lessee of a producing gas lease shall furnish the oil lessee sufficient gas for operating purposes at a rate to be agreed upon, or on failure to agree, the rate shall be determined by the Superintendent: Provided, that the oil lessee shall at his own expense and risk, furnish and install the necessary connections to the gas lessee's well or pipeline. All such connections shall be reported in writing to the Superintendent.

(b) Use of gas by Osage Tribe. (1) Gas from any well or wells shall be furnished to any Tribal-owned building or enterprise at a rate not to exceed the price less the royalty being received or offered by a gas purchaser. This requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that no waste would result. In the absence of a gas purchaser, the rate to be paid by the Osage Tribe shall be determined by the Superintendent based on prices being paid by purchasers in the Osage Mineral Estate. The Osage Tribe is to furnish all necessary materials and labor for such connection with the lessee's gas system. The use of such gas shall be at the risk of the Osage Tribe at all times.

(2) Any member of the Osage Tribe residing in Osage County and outside a corporate city is entitled to the use at his own expense of not to exceed 400,000 cubic feet of gas per calendar year for his principal residence at a rate not to exceed the amount paid by a gas purchaser plus 10 percent. This requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that no waste would result. In the absence of a gas purchaser, the amount to be paid by the Tribal member shall be determined by the Superintendent. Gas to Tribal members shall not be royalty free. The Tribal member is to furnish all necessary material and labor for such connection to the lessee's gas system, and shall maintain his own lines. The use of such gas shall be at the risk of the Tribal member at all times.

(3) Gas furnished by the lessee under paragraphs (b) (1) and (2) of this section may be terminated only with the approval of the Superintendent. A written application for termination must be made to the Superintendent showing justification.

Subpart D – Cessation of Operations

§ 226.52 When can a lessee shutdown, abandon, and plug a well?

No well shall be abandoned until its lack of further profitable production of oil and/or gas has been demonstrated to the satisfaction of the Superintendent. The lessee shall not shut down, abandon, or otherwise discontinue the operation or use of any well for any purpose without the written approval of the Superintendent. All applications for such approval shall be submitted to the Superintendent on forms furnished by the Superintendent.

(a) Application for authority to permanently shut down or discontinue the use or operation of a well shall set forth the justification, probable duration, the means by which the well bore is to be protected, and the contemplated eventual disposition of the well. The method of conditioning such well shall be subject to the approval of the Superintendent.

(b) Prior to permanent abandonment of any well, the oil lessee or the gas lessee, as the case may be, shall offer the well to the other for his recompletion or use under such terms as may be mutually agreed upon but not in conflict with the regulations. Failure of the lessee receiving the offer to reply within 10 days after receipt thereof shall be deemed a rejection of the offer. If, after indicating acceptance, the two parties cannot agree on the terms of the offer within 30 days, the disposition of such well shall be determined by the Superintendent.

(c) The Superintendent is authorized to shut in a lease when the lessee fails to comply with the terms of the lease, the regulations, and/or orders of the Superintendent.

§ 226.53 When must a lessee dispose of casings and other improvements?

(a) Upon termination of a lease, permanent improvements, unless otherwise provided by written agreement with the surface owner and filed with the Superintendent, shall remain a part of said land and become the property of the surface owner upon termination of the lease, other than by termination for cause. Exceptions include personal property not limited to tools, tanks,

pipelines, pumping and drilling equipment, derricks, engines, machinery, tubing, and the casings of all wells. When any lease terminates, all such personal property shall be removed within 90 days or such reasonable extension of time as may be granted by the Superintendent. Otherwise, the ownership of all casings shall revert to lessor and all other personal property and permanent improvements to the surface owner. Nothing herein shall be construed to relieve the lessee of responsibility for removing any such personal property or permanent improvements from the premises if required by the Superintendent and restoring the premises as nearly as practicable to the original state.

(b) Upon termination of lease for cause. When there has been a termination for cause, the lessor shall be entitled and authorized to take immediate possession of the lease premises and all permanent improvements and all other equipment necessary for the operation of the lease.

(c) Wells to be abandoned shall be promptly plugged as prescribed by the Superintendent. Applications to plug shall include a statement affirming compliance with § 226.52 and shall set forth reasons for plugging, a detailed statement of the proposed work, including the kind, location, and length of plugs (by depth), plans for mudding and cementing, testing, parting and removing casing, and any other pertinent information: Provided, that the Superintendent may give oral permission and instructions pending receipt of a written application to plug a newly drilled hole. The lessee shall submit a written application for authority to plug a well.

(d) The lessee shall plug and fill all dry or abandoned wells in a manner to confine the fluid in each formation bearing fresh water, oil, gas, salt water, and other minerals, and to protect it against invasion of fluids from other sources. Mud-laden fluid, cement, and other plugs shall be used to fill the hole from bottom to top.

(1) If a satisfactory agreement is reached between the lessee and the surface owner, subject to the approval of the Superintendent, the lessee may condition the well for use as a fresh water well and shall so indicate on the plugging record.

(2) The manner in which plugging material shall be introduced and the type of material so used shall be subject to the approval of the Superintendent.

(3) Within 10 days after plugging, the lessee shall file with the Superintendent a complete report of the plugging of each well.

(4) When any well is plugged and abandoned, the lessee shall, within 90 days, clean up the premises around such well to the satisfaction of the Superintendent.

Subpart E – Requirements of Lessees

§ 226.54 What general requirements apply to lessees?

(a) The lessee shall comply with all orders or instructions issued by the Superintendent. The Superintendent or his representative may enter upon the leased premises for the purpose of inspection.

(b) The lessee shall keep a full and correct account of all operations, receipts, and disbursements and make reports thereof, as required.

(c) The lessee's books and records shall be available to the Superintendent for inspection.

(d) The lessee shall maintain and preserve records for 6 years from the day on which the relevant transaction recorded occurred unless the Superintendent notifies the lessee of an audit or investigation involving the records and that they must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the lessee is released in writing from the obligation to maintain the records.

§ 226.55 When must a lessee designate process agents?

(a) Before actual drilling or development operations are commenced on leased lands, the lessee or assignee, if not a resident of the State of Oklahoma, shall appoint a local or resident representative within the State of Oklahoma on whom the Superintendent may serve notice or otherwise communicate in securing compliance with the regulations in this part, and shall notify the Superintendent of the name and post office address of the representative appointed.

(b) Where several parties own a lease jointly, one representative or agent shall be designated whose duties shall be to act for all parties concerned. Designation of such representative should be made by the party in charge of operations.

(c) In the event of the incapacity or absence from the State of Oklahoma of such designated local or resident representative, the lessee shall appoint a substitute to serve in his stead. In the absence of such representative or appointed substitute, any employee of the lessee upon the leased premises or person in charge of drilling or related operations thereon shall be considered the representative of the lessee for the purpose of service of orders or notices as herein provided.

§ 226.56 What are the lessee's record and reporting requirements for wells?

(a) The lessee shall keep accurate and complete records of the drilling, redrilling, deepening, repairing, treating, plugging, or abandonment of all wells. These records shall show:

(1) All the formations penetrated, the content and character of the oil, gas, other marketable product, or water in each formation, and the kind, weight, size, landed depth, and cement record of casing used in drilling each well;

(2) The record of drill-stem and other bottom hole pressure or fluid sample surveys, temperature surveys, directional surveys, and the like;

(3) The materials and procedure used in the treating or plugging of wells or in preparing them for temporary abandonment; and

(4) Any other information obtained in the course of well operation.

(b) The lessee shall take such samples and make such tests and surveys as may be required by the Superintendent to determine conditions in the well or producing reservoir and to obtain information concerning formations drilled, and shall furnish such reports as required in the manner and method specified by the Superintendent.

(c) Within 10 days after completion of operations on any well, the lessee shall transmit to the Superintendent:

(1) All applicable information on forms furnished by the Superintendent;

(2) A copy of the electrical, mechanical or radioactive log, or other types of survey of the well bore; and

(3) The core analysis obtained from the well.

(d) The lessee shall also submit other reports and records of operations as may be required and in the manner, form, and method prescribed by the Superintendent.

(e) The lessee shall measure production of oil, gas, other marketable product, and water from individual wells at reasonably frequent intervals to the satisfaction of the Superintendent.

(f) Upon request and in the manner, form and method prescribed by the Superintendent, the lessee shall furnish a plat showing the location, designation, and status of all wells on the leased lands, together with such other pertinent information as the Superintendent may require.

§ 226.57 What line drilling limitations must a lessee comply with?

The lessee shall not drill within 300 feet of the boundary line of leased lands, or locate any well or tank within 200 feet of any public highway, any established watering place, or any

building used as a dwelling, granary, or barn, except with the written permission of the Superintendent. Failure to obtain advance written permission from the Superintendent shall subject the lessee to termination of the lease and/or plugging of the well.

§ 226.58 What are the requirements for marking wells and tank batteries?

The lessee shall clearly and permanently mark all wells and tank batteries in a conspicuous place with the number, legal description, operator's name, lessee's name, and telephone number, and shall take all necessary precautions to preserve these markings.

§ 226.59 What precautions must a lessee take to ensure natural formations are protected?

The lessee shall, to the satisfaction of the Superintendent, take all proper precautions and measures to prevent damage or pollution of oil, gas, fresh water, or other mineral bearing formations.

§ 226.60 What are a lessee's obligations to maintain control of wells?

(a) In drilling operations in fields where high pressures, lost circulation, or other conditions exist which could result in blowouts, the lessee shall install an approved gate valve or other controlling device in proper working condition for use until the well is completed. At all times, preventative measures must be taken in all well operations to maintain proper control of subsurface strata.

(b) Drilling wells. The lessee shall take all necessary precautions to keep each well under control at all times, and shall utilize and maintain materials and equipment necessary to insure the safety of operating conditions and procedures.

(c) Vertical drilling. The lessee shall conduct drilling operations in a manner so that the completed well does not deviate significantly from the vertical without the prior written approval of the Superintendent. Significant deviation means a projected deviation of the well bore from

the vertical of 10° or more, or a projected bottom hole location which could be less than 200 feet from the spacing unit or lease boundary. Any well which deviates more than 10° from the vertical or could result in a bottom hole location less than 200 feet from the spacing unit or lease boundary without prior written approval must be reported promptly to the Superintendent. In these cases, a directional survey is required.

(d) High pressure or loss of circulation. The lessee shall take immediate steps and utilize necessary resources to maintain or restore control of any well in which the pressure equilibrium has become unbalanced.

(e) Protection of fresh water and other minerals. The lessee shall isolate freshwater-bearing and other usable water containing 5,000 ppm or less of dissolved solids and other mineral-bearing formations and protect them from contamination. Tests and surveys of the effectiveness of such measures shall be conducted by the lessee using procedures and practices approved or prescribed by the Superintendent.

(f) Whenever applicable given the circumstances, the lessee shall conduct activities in accordance with the standards and procedures set forth in Bureau of Land Management Onshore Order 6, Hydrogen Sulfide Operations, and any amendments thereto.

§ 226.61 How does a lessee prevent waste of oil and gas and other marketable products?

(a) The lessee shall conduct all operations in a manner that will prevent waste of oil and gas and other marketable products and shall not wastefully utilize oil or gas or other marketable products.

(b) The Superintendent shall have the authority to impose such requirements as he deems necessary to prevent waste of oil and gas and other marketable products and to promote the greatest ultimate recovery of oil and gas and other marketable products.

(c) For purposes of this section, waste includes, but is not limited to, the inefficient excessive or improper use or dissipation of reservoir energy which would reasonably reduce or diminish the quantity of oil or gas or other marketable product that might ultimately be produced, or the unnecessary or excessive surface loss or destruction, without beneficial use, of oil, gas or other marketable product.

§ 226.62 How does a lessee measure and store oil?

(a) All production run from the lease shall be measured according to methods and devices approved by the Superintendent. Facilities suitable for containing and measuring accurately all crude oil produced from the wells shall be provided by the lessee and shall be located on the leasehold unless otherwise approved by the Superintendent. The lessee shall furnish to the Superintendent a copy of 100-percent capacity tank table for each tank. Meters and installations for measuring oil must be approved.

(b) The lessee must ensure that each Lease Automatic Custody Transfer (LACT) meter is inspected, calibrated, and adjusted at least twice in each calendar year, no less than five months apart. The lessee must ensure that the Superintendent is given 48 hours prior notice of all LACT meter inspections, calibrations, and adjustments. The Superintendent shall have the right to witness, unannounced, all LACT meter inspections, calibrations, and adjustments. The lessee shall fully cooperate with such witnessing. If the Superintendent is not present, then he may request records relating to all LACT meter inspections, calibrations, and adjustments. Repeated failures to comply with this subparagraph shall render the lease subject to termination after consultation with the Osage Minerals Council.

(c) When a tank of oil is ready for removal by the purchaser, the lessee shall ensure that the Superintendent is informed of that fact before the purchaser is so informed via an electronic

or telephonic method established by the Superintendent for reporting pursuant to this subparagraph. Failure to comply with the provisions of this subparagraph shall subject the lessee to a penalty of \$500. This dollar amount shall be adjusted as specified in § 226.70. Repeated failures to inform the Superintendent shall render the lease subject to termination after consultation with the Osage Minerals Council.

(d) The Superintendent shall have the right to witness all gaugings, unannounced, on each lease. The lessee shall fully cooperate with such gaugings and repeated failures to comply shall render the lease subject to termination after consultation with the Osage Minerals Council.

§ 226.63 How is gas measured?

(a) All gas required to be measured shall be measured in accordance with the standards, procedures, and practices set forth in Bureau of Land Management Onshore Oil and Gas Order 5, Measurement of Gas, and any amendments thereto. To the extent that Onshore Oil and Gas Order 5 conflicts with any provision of these regulations, these regulations shall control.

(b) All gas, required to be measured, shall be measured by meter (preferably of the orifice meter type) unless otherwise agreed to in writing by the Superintendent. All gas meters must be approved by the Superintendent and installed at the expense of the lessee or purchaser at such places as may be agreed to in writing by the Superintendent. For computing the volume of all gas produced, sold or subject to royalty, the standard of pressure shall be 14.65 pounds to the square inch, and the standard of temperature shall be 60 degrees F. All measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was actually measured, unless otherwise authorized in writing by the Superintendent.

(c) The lessee must ensure that each meter is inspected, calibrated, and adjusted at least twice in each calendar year, no less than five months apart. The lessee must ensure that the Superintendent is given 48 hours prior notice of all meter inspections, calibrations, and adjustments. The Superintendent shall have the right to witness, unannounced, all meter inspections, calibrations, and adjustments. The lessee shall fully cooperate with such witnessing or be subject to lease termination. If the Superintendent is not present, he may request records relating to all meter inspections, calibrations, and adjustments. Repeated failures to comply with this subparagraph shall render the lease subject to termination after consultation with the Osage Minerals Council.

§ 226.64 When can a lessee use of gas for lifting oil?

The lessee shall not use raw natural gas from a distinct or separate stratum for the purpose of flowing or lifting the oil, except where the lessee has an approved right to both the oil and the gas, and then only with the approval of the Superintendent of such use and of the manner of its use.

§ 226.65 What site security standards apply to oil and gas and other marketable product leases?

(a) Definitions. The following definitions apply to terms used in this section.

Appropriate valves. Those valves in a particular piping system, i.e., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation.

Effectively sealed. The placement of a seal in such a manner that the position of the sealed valve may not be altered without the seal being destroyed.

Production phase. That period of time or mode of operation during which crude oil is delivered directly to or through production vessels to the storage facilities and includes all operations at the facility other than those defined by the sales phase.

Sales phase. That period of time or mode of operation during which crude oil is removed from the storage facilities for sales, transportation or other purposes.

Seal. A device, uniquely numbered, which completely secures a valve.

(b) Minimum Standards. Each lessee shall comply with the following minimum standards to assist in providing accountability of oil or gas production:

(1) All lines entering or leaving oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise modified by other subparagraphs of this paragraph, and any equipment needed for effective sealing, excluding the seals, shall be located at the site. For a minimum of 6 years the lessee shall maintain a record of seal numbers used and shall document on which valves or connections they were used as well as when they were installed and removed. The site facility diagram(s) shall show which valves will be sealed in which position during both the production and sales phases of operation.

(2) Each LACT system shall employ meters that have non-resettable totalizers. There shall be no by-pass piping around the LACT. All components of the LACT that are used for volume or quality determinations of the oil shall be effectively sealed. For systems where production may only be removed through the LACT, no sales or equalizer valves need be sealed. However, any valves which may allow access for removal of oil before measurement through the LACT shall be effectively sealed.

(3) There shall be no by-pass piping around gas meters. Equipment which permits changing the orifice plate without bleeding the pressure off the gas meter run is not considered a by-pass.

(4) For oil measured and sold by hand gauging, all appropriate valves shall be sealed during the production or sales phase, as applicable.

(5) Circulating lines having valves which may allow access to remove oil from storage and sales facilities to any other source except through the treating equipment back to storage shall be effectively sealed as near the storage tank as possible.

(6) The lessee, with reasonable frequency, shall inspect all leases to determine production volumes and that the minimum site security standards are being met. The lessee shall retain records of such inspections and measurements for 6 years from generation. Such records and measurements shall be available to the Superintendent upon request.

(7) Any lessee may request the Superintendent to approve a variance from any of the minimum standards prescribed by this section. The variance request shall be submitted in writing to the Superintendent who may consider such factors as regional oil field facility characteristics and fenced, guarded sites. The Superintendent may approve a variance if the proposed alternative will ensure measures equal to or in excess of the minimum standards provided in paragraph (b) of this section will be put in place to detect or prevent internal and external theft, and will result in proper production accountability.

(c) Site security plans. (1) Site security plans, which include the lessee's plan for complying with the minimum standards enumerated in paragraph (b) of this section for ensuring accountability of oil/condensate production are required for all facilities and such facilities shall be maintained in compliance with the plan. For new facilities, notice shall be given that it is

subject to a specific existing plan, or a notice of a new plan shall be submitted, no later than 60 days after completion of construction or first production, and on that date the facilities shall be in compliance with the plan. At the lessee's option, a single plan may include all of the lessee's leases, units, and communitized areas, provided the plan clearly identifies each lease, unit, or communitized area included within the scope of the plan and the extent to which the plan is applicable to each lease, unit, or communitized area so identified.

(2) The lessee shall retain the plan, but shall notify the Superintendent of its completion and which leases, units, and communitized areas are involved. Such notification is due at the time the plan is completed as required by paragraph (c)(1) of this section. Such notification shall include the location and normal business hours of the office where the plan will be maintained. Upon request, all plans shall be made available to the Superintendent.

(3) The plan shall include the frequency and method of the lessee's inspection and production volume recordation. The Superintendent may, upon examination, require adjustment of the method or frequency of inspection.

(d) Site facility diagrams. (1) Facility diagrams are required for all facilities which are used in storing oil/condensate. Facility diagrams shall be filed within 60 days after new measurement facilities are installed or existing facilities are modified.

(2) No format is prescribed for facility diagrams. They are to be prepared on 8 ½"×11" paper, if possible, and be legible and comprehensible to a person with ordinary working knowledge of oil field operations and equipment. The diagram need not be drawn to scale.

(3) A site facility diagram shall accurately reflect the actual conditions at the site and shall, commencing with the header if applicable, clearly identify the vessels, piping, metering system, and pits, if any, which apply to the handling and disposal of oil, gas and water. The

diagram shall indicate which valves shall be sealed and in what position during the production or sales phase. The diagram shall clearly identify the lease on which the facility is located and the site security plan to which it is subject, along with the location of the plan.

§ 226.66 What are a lessee's reporting requirements for accidents, fires, theft, and vandalism?

Lessees shall make a complete report to the Superintendent of all accidents, fires, or acts of theft and vandalism occurring on the leased premises as soon as discovered, but not later than the next business day. Said report shall include an estimate of the volume of oil involved. Lessees also are expected to report such thefts promptly to local law enforcement agencies and internal company security.

Subpart F – Penalties

§ 226.67 What are the penalties for violations of lease terms?

Violation of any of the terms or conditions of any lease or of the regulations in this part shall subject the lease to termination by the Superintendent after consultation with the Osage Minerals Council; or the lessee to a fine of not more than \$1000 per day for each day of noncompliance with the written orders of the Superintendent; or to both such fine and lease termination. The dollar amount of penalties under this section shall be adjusted as specified in § 226.70. All penalties and fines shall be paid to the Superintendent in the form of a money order, cashier's check or electronic funds transfer.

§ 226.68 What are the penalties for violation of certain operating regulations?

In lieu of the penalties provided under § 226.67, penalties may be imposed by the Superintendent for violation of certain sections of the regulations of this part as follows, with the dollar amounts in this section adjusted as specified in § 226.70:

(a) For failure to obtain permission to start operations required by § 226.34(a), \$150 per day.

(b) For failure to file records required by § 226.56, \$150 per day until compliance is met.

(c) For failure to mark wells or tank batteries as required by § 226.58, \$150 per day for each well or tank battery.

(d) For failure to construct and maintain pits as required by § 226.44(b) and (d), \$150 for each day after operations are commenced on any well until compliance is met.

(e) For failure to comply with § 226.60 regarding control of wells, \$250 per day.

(f) For failure to notify Superintendent before drilling, redrilling, deepening, plugging, or abandoning any well, as required by §§ 226.34(b) through (c) and 226.49, \$400 per day.

(g) For failure to properly care for and dispose of deleterious fluids as provided in § 226.44(e), \$1000 per day until compliance is met.

(h) For failure to file plugging reports as required by § 226.53(d) and for failure to file reports as required by § 226.26, \$150 per day for each violation until compliance is met.

(i) For failure to perform or start an operation within 5 days after ordered by the Superintendent in writing under authority provided in this part, if said operation is thereafter performed by or through the Superintendent, the actual cost of performance thereof, plus 25 percent.

(j) For failure to maintain adequate bonding as required by § 226.9, \$500 per day.

(k) Whenever a transporter fails to permit inspection for proper documentation by any authorized representative of the Superintendent, the transporter shall be liable for a civil penalty of up to \$1000 per day for the violation, not to exceed a maximum of 20 days, dating from the

date of notice of the failure to permit inspection and continuing until the proper documentation is provided.

§ 226.69 What are the penalties for providing false, inaccurate, or misleading information; or engaging in unlawful acts?

(a) The lessee or its authorized representative is hereby notified that criminal procedures are provided by 18 U.S.C. 1001 for knowingly filing fraudulent reports and information.

(b) Any person shall be liable for a civil penalty of up to \$25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(2) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas or other marketable product from any lease without having valid legal authority to do so; or

(3) Purchases, accepts, sells, transports or conveys to another any oil or gas or other marketable product knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a lease.

(c) The dollar amount of penalties under this section shall be adjusted as specified in § 226.70.

§ 226.70 How are fees and penalties scaled?

(a) Whenever the settlement value for a barrel of oil under § 226.18 in any month is greater than \$100 in the month preceding the assessment of any dollar amount in §§ 226.14,

226.62(c), 226.67, and 226.68, the dollar amount shall be adjusted by dividing by 100 and multiplying by the Settlement Price for Oil for the preceding month.

(b) Fines and penalties under this part that are not received within 10 days after notice of the fine or penalty shall be subject to late charges at the rate of not less than 1 ½ percent per month for each month or fraction thereof until paid, or such other rate as may be set by the Superintendent after consultation with the Osage Minerals Council. The Osage Minerals Council, subject to the approval of the Superintendent, may waive the late charge.

Subpart G – Appeals and Notices

§ 226.71 Who can file an appeal?

Any person, firm or corporation aggrieved by any decision or order issued by or under the authority of the Superintendent, by virtue of the regulations in this part, may appeal pursuant to 25 CFR part 2.

§ 226.72 Are the notices by the Superintendent binding?

Notices and orders issued by the Superintendent to the representative shall be binding on the lessee. The Superintendent may in his/her discretion increase the time allowed in his/her orders and notices.

§ 226.73 Information collection.

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned OMB Control Number 1076-0XXX. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: August 16, 2013

Kevin K. Washburn
Assistant Secretary – Indian Affairs

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